

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: 4/20/05 - KW

Division: INDUSTRIAL DEVELOPMENT AUTHORITY

Bulk Item: Yes ☐ No ☒

Department: INDUSTRIAL DEVELOPMENT AUTHORITY

AGENDA ITEM WORDING:

Approval of a Resolution by the Monroe County Industrial Development Authority providing for the issuance of not exceeding \$2,965,000 aggregate principal amount of Industrial Development Revenue Bonds (North Key Largo Utility Corp. Project), Series 2005, to be exchanged for a like principal amount of the Authority's outstanding Industrial Development Revenue Bonds (North Key Largo Utility Corp. Project), Series 1995, pursuant to an offer to exchange.

ITEM BACKGROUND:

In 1995 the IDA issued its Revenue Bonds, Series 1995, to be used by the North Key Largo Utility to finance certain capital improvements to its utility system affording the Utility tax-exempt financing. The current tax-exempt market rate allows the Utility to re-finance the 1995 bonds and reduce its debt service obligations by offering the holders of the 1995 bonds new 2005 bonds in exchange for their 1995 bonds. For holders who elect not to exchange their 1995 bonds for 2005 bonds, the Utility will refund and redeem their 1995 bonds so the 1995 bonds will no longer be outstanding. As Issuer of the 1995 Bonds and the proposed 2005 Bonds, the IDA's approval is required.

PREVIOUS RELEVANT BOCC ACTION:

Approval of issuance of IDA Revenue Bonds, Series 1995.

CONTRACT/AGREEMENT CHANGES: N/A

STAFF RECOMMENDATIONS:

Approval.

TOTAL COST: **

BUDGETED: Yes ☐ No ☐

COST TO COUNTY: **

SOURCE OF FUNDS: _____

**** Depends upon pricing at the time of bond sale.**

REVENUE PRODUCING: Yes ☐ No ☐ **AMOUNT PER MONTH** _____ **Year** _____

APPROVED BY: County Atty [Signature] OMB/Purchasing _____ Risk Management _____

DIVISION DIRECTOR APPROVAL:

[Signature] 04/20/05
JOHN R. COLLINS, COUNTY ATTORNEY

DOCUMENTATION: Included ☒ Not Required ☐

DISPOSITION: _____ **AGENDA ITEM #** _____

NABORS, GIBLIN & NICKERSON, P.A.

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VIA FEDERAL EXPRESS

April 1, 2005

RECEIVED

APR 04 2005

MONROE COUNTY ATTORNEY

Richard Collins, Esquire
Monroe County Attorney
502 Whitehead Street, 3rd Floor Rear
Key West, Florida 33040

Re: Monroe County Industrial Development Authority – Approval of North
Key Largo Utility transactions

Dear Richard:

As we recently discussed, enclosed please find a Resolution of the Monroe County Industrial Development Authority (the "IDA"), together with five documents which are Appendices A through E to the Resolution. North Key Largo Utility Corp. (the "Utility") has requested that the Resolution be considered by the Board of the IDA at the meeting scheduled for April 20. I separated the appendices from the Resolution as I was unsure whether you would include all of the appendices within the agenda packages or simply the Resolution with instructions that the appendices were on file for their review. Either way, the enclosed should be everything necessary for agenda packages and formal adoption.

By way of background, in 1995 the IDA issued its Industrial Development Revenue Bonds (North Key Largo Utility Corp. Project), Series 1995 (the "1995 Bonds"), the proceeds of which were used by the Utility to finance certain capital improvements to its utility system. The 1995 Bonds are considered "private activity bonds" or "industrial development bonds" under the Internal Revenue Code and as such neither the IDA nor Monroe County has any financial liability with respect to the 1995 Bonds. The IDA has simply acted as a conduit issuer of the 1995 Bonds to afford the Utility the advantage of tax-exempt financing. As you may recall, the IDA issued similar bonds for the benefit of the Guidance Clinic of the Middle Keys, Inc. in 2003.

The 1995 Bonds originally were privately placed to a limited number of investors many, if not all, of which were Monroe County residents. The current tax-exempt interest rate market is such that the Utility can refinance the 1995 Bonds and reduce its debt service obligations. The Utility and its advisors have determined that the most cost effective and

Richard Collins, Esq.

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beneficial way to accomplish the refinancing of the 1995 Bonds is through an exchange program whereby the Utility will offer the holders of 1995 Bonds new 2005 Bonds in exchange for their 1995 Bonds. The new 2005 Bonds will have a lower interest rate. The Utility has already had discussions with nearly all of the 1995 Bondholders and the Utility expects most, if not all, of the holders to exchange their 1995 Bonds. With respect to any holders of 1995 Bonds that do not elect to so exchange their 1995 Bonds for new 2005 Bonds, the Utility will refund and redeem those 1995 Bonds through the issuance of the 2005 Bonds. At the end of the transactions, the 1995 Bonds will no longer be outstanding. The 2005 Bonds will be outstanding in the aggregate principal amount of not exceeding \$2,965,000.

The Utility is also taking this refinancing opportunity to make some modifications to the underlying legal documents which will give the Utility more flexibility with its future financing needs. These modifications do not negatively impact the IDA or the County.

As the issuer of the 1995 Bonds and the proposed 2005 Bonds, the IDA's approval to the transactions is required. The Resolution authorizes the issuance of the 2005 Bonds in the aggregate principal amount of not exceeding \$2,965,000, authorizes the refinancing of the 1995 Bonds, whether through the exchange program or a traditional refunding and redemption and approves the form of various legal documents. The Resolution also authorizes the Chairman and Secretary of the IDA to execute certain documents and instruments to which the IDA will be a party and which are necessary to consummate the transactions described herein. Finally, the Resolution contains certain findings in Section 3 that are required for this type of transaction under Part II, Chapter 159, Florida Statutes, known as the Florida Industrial Development Financing Act.

As Bond Counsel to Monroe County and the IDA, Nabors, Giblin & Nickerson, P.A. has been involved in the structuring of the transaction described herein and has reviewed all of the legal documentation. We believe that all of the documents as presented today are in order and adequately protect the interests of the IDA and Monroe County. Neither the IDA nor Monroe County will have any financial or other liability as a result of the transactions discussed herein. As I have informed the Board previously, however, this is not to say that the IDA and the County will not have any administrative burdens should there subsequently be a default or other serious problem with respect to the 2005 Bonds in the future. In such a situation, there may be lawsuits and the like and as the issuer of the 2005 Bonds the IDA may be required to be involved, most likely in some minor administrative context. The Utility has indemnified the IDA and Monroe County with respect to such matters in the legal documents.

Richard Collins, Esq.
April 1, 2005
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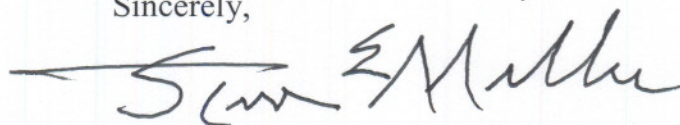
I also wanted to mention that the legal documents have all been prepared by Jack McWilliams of Livermore, Freeman & McWilliams, P.A., the Utility's bond counsel. The Utility is being represented by John Jenkins of Rose, Sundstrom & Bentley, LLP. I have worked with Jack and John in numerous transactions over the last several years and I have the utmost confidence in their legal skills and diligence. I believe the transactions as they have structured and drafted them are in good order.

It has been my experience with Monroe County that the IDA is not a particularly active governmental entity (not unlike many other industrial development authorities in the State), meeting mostly to accomplish financing transactions such as those proposed by the Utility. Our records indicate that the IDA is set up so that whoever is then serving as Mayor and Vice Mayor of the Board of County Commissioners would also serve as the Chair and Vice Chair of the IDA Board. Unless that policy has changed since 2003, I would recommend operating in the same manner. My records also indicate that Commissioner Neugent was serving as Secretary to the IDA Board in 2003. If Commissioner Neugent is neither the Mayor or Vice Mayor at this time then I would suggest he remain the Secretary. There will be certain documents that the Secretary will need to attest, including the Resolution. Of course, the Board of the IDA could appoint another member as Secretary if they so desire.

In sum, if it is the staff's desire to continue to move forward with the Utility's request, a meeting of the IDA will need to be properly noticed (as the County's Board meetings are noticed) and held on April 20. At the time this item is to be considered, the Board of County Commissioners will need to recess temporarily and convene as the IDA. They can then consider the Resolution. After they consider the Resolution they can adjourn the meeting of the IDA and reconvene the meeting of the Board of County Commissioners.

As I mentioned to you the other day, I will be more than happy to attend the meeting on April 20 to answer any questions concerning the transactions described herein. Please let me know as soon as you can whether you would like me to be at the meeting. Please give me a call if you have any questions or concerns. Thanks again for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven E. Miller". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Steven E. Miller

Enclosures

cc: Mr. Thomas J. Willi

RESOLUTION NO. _____

A RESOLUTION BY THE MONROE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, PROVIDING FOR THE ISSUANCE BY THE AUTHORITY OF NOT EXCEEDING \$2,965,000 AGGREGATE PRINCIPAL AMOUNT OF INDUSTRIAL DEVELOPMENT REVENUE BONDS (NORTH KEY LARGO UTILITY CORP. PROJECT), SERIES 2005 TO BE EXCHANGED FOR A LIKE PRINCIPAL AMOUNT OF THE AUTHORITY'S OUTSTANDING INDUSTRIAL DEVELOPMENT REVENUE BONDS (NORTH KEY LARGO UTILITY CORP. PROJECT), SERIES 1995 PURSUANT TO AN OFFER TO EXCHANGE; PROVIDING FOR THE RIGHTS OF THE OWNERS OF THE SERIES 2005 BONDS AND FOR THE PAYMENT THEREOF; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE ISSUANCE OF THE SERIES 2005 BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND INDENTURE AND A LOAN AGREEMENT PERTAINING TO THE SERIES 2005 BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF THE SERIES 2005 BONDS; AUTHORIZING ALL OTHER RELATED INSTRUMENTS AND CERTIFICATES; PROVIDING FOR THE REDEMPTION OF SERIES 1995 BONDS NOT EXCHANGED FOR SERIES 2005 BONDS; PROVIDING FOR OTHER MISCELLANEOUS MATTERS IN CONNECTION THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT RESOLVED BY THE MONROE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to the provisions of the Act.

SECTION 2. DEFINITIONS. Unless the context otherwise requires, the terms used in this Resolution shall have the meanings specified in this section. Words importing the singular shall include the plural, words importing the plural shall include the singular, and words importing persons shall include corporations and other entities or associations.

"Act" means the Florida Industrial Development Financing Act, Parts II and III, Chapter 159, Florida Statutes, and other applicable provisions of law.

"Authority" means the Monroe County Industrial Development Authority, a public body corporate and politic and an industrial development authority organized and existing under the Constitution and laws of the State including, particularly, the Act, its successors and assigns.

"Bank" means Wachovia Bank, National Association, a national banking association, its successors and assigns, as bond trustee.

"Bond Counsel" means a nationally recognized bond counsel acceptable to the Company and the Authority.

"Bond Indenture" means the Bond Trust Indenture to be executed by and between the Authority and the Bank substantially in the form attached hereto as Appendix A and incorporated herein by reference.

"Chairman" shall mean the Chairman of the Authority, or such other person or persons who are authorized to act on his or her behalf.

"Company" means North Key Largo Utility Corp., a Florida not-for-profit corporation, and any successor, surviving, resulting or transferee entity, as provided in the Loan Agreement.

"County" means Monroe County, Florida, a political subdivision of the State.

"Loan Agreement" means the Loan Agreement to be executed by and between the Authority and the Company substantially in the form attached hereto as Appendix B and incorporated herein by reference.

"Offer to Exchange" means the Offer to Exchange the outstanding Prior 1995 Bonds for a like principal amount of Series 2005 Bonds substantially in the form attached hereto as Appendix C and incorporated herein by reference.

"Prior 1995 Bonds" means the Monroe County Industrial Development Authority Industrial Development Revenue Bonds (North Key Largo Utility Corp. Project), Series 1995, originally issued in the aggregate principal amount of \$3,400,000 and outstanding on the date hereof in the amount of \$2,965,000, to pay that certain loan from the Authority to the Company pursuant to a loan agreement and mortgage, dated as of March 9, 1995, between the Company and the Authority.

"Private Placement Memorandum" means the Private Placement Memorandum to be executed by the Company and delivered to owners of the Prior 1995 Bonds describing the Offer to Exchange and the Series 2005 Bonds, substantially in the form attached hereto as Appendix D and incorporated herein by reference.

"Secretary" means the ex-officio secretary to the Authority, or such other person or persons who are authorized to act on his or her behalf.

"Series 2005 Bonds" means the Authority's Industrial Development Revenue Bonds (North Key Largo Utility Corp. Project), Series 2005, to be issued in exchange for a like principal amount of Prior 1995 Bonds pursuant to the Offer to Exchange, the Bond Indenture and Loan Agreement in

accordance with the terms hereof and thereof in an aggregate principal amount of not exceeding \$2,965,000.

"State" means the State of Florida.

"System" means the complete wastewater system currently owned and operated by the Company, including all real property and all facilities located thereon and all future acquisitions, located in the County, a portion of which was acquired, constructed and equipped with proceeds of the Prior 1995 Bonds.

SECTION 3. FINDINGS. It is hereby ascertained, determined and declared as follows:

A. The Authority is a public body corporate and politic, a public instrumentality and an industrial development authority, and is duly authorized and empowered by the Act to finance or refinance the acquisition, construction, reconstruction, improvement, rehabilitation, renovation, expansion and enlargement, or additions to, furnishing and equipping of any capital projects, including any "projects" described in the Act including land, rights in land, buildings and other structures, machinery, equipment, appurtenances and facilities incidental thereto, and other improvements necessary or convenient therefor.

B. The Company previously incurred the Prior 1995 Bonds to finance a portion of the costs of acquiring, constructing and equipping portions of the System, which constitute "facilities for the furnishing of sewerage" within the meaning of the Act. The Company has requested that the Authority issue the Series 2005 Bonds in order to allow the Company to refinance the Prior 1995 Bonds to achieve debt service savings and to change certain covenants regarding additional indebtedness, all as set forth in the Loan Agreement, the Bond Indenture, that certain Master Indenture by and between the Company and the Bank, as master trustee, and the Private Placement Memorandum.

C. The refinancing of the Prior 1995 Bonds by the Authority through the issuance of the Series 2005 Bonds pursuant to the Act, will promote and preserve the economic development and health, welfare and safety of the citizens of Monroe County, will provide and maintain the residents of the County with wastewater treatment facilities, will promote the general economic structure of the County, and will otherwise serve the public purposes of the Act.

D. Upon consideration of the documents described herein and the information presented to the Authority at or prior to the adoption of this Resolution, the Authority has made and does hereby make the following findings and determinations:

(i) The System consists of the complete wastewater system currently owned and operated by the Company, including all real property and all wastewater facilities located thereon and hereafter acquired. The System is located in the County and is owned and operated by the Company in its business of providing wastewater treatment in the County.

(ii) The Company has shown that the System enhances and improves the health, safety and welfare of the County and the State, and it serves other predominantly public purposes as set forth in the Act. It is desirable and will further the public purposes of the Act, and it will most effectively serve the purposes of the Act for the Authority to issue the Series 2005 Bonds for the purpose of providing funds to refinance the Prior 1995 Bonds pursuant to the Offer to Exchange, all as provided in the Offer to Exchange, the Bond Indenture, the Loan Agreement and the Private Placement Memorandum, which contain such provisions as are necessary to effectuate the purposes of the Act.

(iii) The System is appropriate to the needs and circumstances of, and makes a significant contribution to, the economic growth of the County; provides wastewater treatment and gainful employment, and serves a public purpose by advancing the economic prosperity, the public health, or the general welfare of the State and the County and their people as stated in the Act.

(iv) Based solely on representations made by the Company and information provided to the Authority by the Company in compliance with the criteria established by the Act, the Company is fully capable and willing (a) to fulfill its obligations under the Loan Agreement and any other agreements to be made in connection with the issuance of the Series 2005 Bonds and the use of the Series 2005 Bond proceeds for refinancing the Prior 1995 Bonds, including the obligation to make loan payments or other payments in amounts sufficient in the aggregate to pay all of the interest, principal, and redemption premiums, if any, on the Series 2005 Bonds, in the amounts and at the times required, (b) to operate, repair and maintain at its own expense the System and all other facilities of the Company, and (c) to serve the purposes of the Act and such other responsibilities as may be imposed under such agreements.

(v) The County and other local agencies have coped satisfactorily with the impact of the System and provide, or cause to be provided when needed, the public facilities, including utilities and public services, that are necessary for the operation, repair and maintenance of the System.

(vi) Adequate provision is made under the Loan Agreement for the operation, repair and maintenance of the System at the expense of the Company, for the payment of the principal of, premium, if any, and interest on the Series 2005 Bonds, when and as the same become due, and payment by the Company of all other costs in connection with the refinancing and the operation, maintenance and administration of the System.

(vii) The costs of the refinancing whether paid from the proceeds of the Series 2005 Bonds or paid by the Company shall be "costs" of a "project" within the meaning of the Act.

(viii) The principal of, premium, if any, and interest on the Series 2005 Bonds and all other pecuniary obligations under the Loan Agreement or otherwise in connection with

the issuance of the Series 2005 Bonds shall be payable solely from the loan payments and other revenues and proceeds received under the Loan Agreement or otherwise from the operation, sale, lease or other disposition of the System and other operations of the Company, including proceeds from insurance condemnation awards and proceeds of any foreclosure or other realization upon the liens or security interests under the Loan Agreement and all other related security documents, the proceeds of the Series 2005 Bonds and income from the temporary investment of the proceeds of the Series 2005 Bonds or of such other revenues and proceeds, as pledged for such payment under the Loan Agreement.

(ix) Neither the faith and credit nor the taxing power of the County, the State, the Authority or of any political subdivision or agency thereof is pledged to the payment of the Series 2005 Bonds and neither the County, the State, the Authority nor any political subdivision or agency thereof shall ever be required or obligated to levy ad valorem taxes on any property within their territorial limits to pay the principal of, premium, if any, or interest on such Series 2005 Bonds or to pay the same from any funds thereof other than such revenues, receipts and proceeds so pledged, and the Series 2005 Bonds shall not constitute a lien upon any property owned by the County, the Authority or the State or any political subdivision or agency thereof, other than the Authority's interest in the Loan Agreement and the property rights, receipts, revenues and proceeds pledged therefor under and as provided in the Loan Agreement and any other agreements securing the Series 2005 Bonds.

(x) All requirements precedent to the adoption of this Resolution, of the Constitution and other laws of the State of Florida, including the Act, have been complied with.

SECTION 4. AUTHORIZATION OF OFFER OF EXCHANGE OF SERIES 2005 BONDS FOR PRIOR 1995 BONDS, AUTHORIZATION AND DESCRIPTION OF THE SERIES 2005 BONDS. The Authority hereby authorizes the issuance of a series of bonds to be known as the "Monroe County Industrial Development Authority Industrial Development Revenue Bonds (North Key Largo Utility Corp. Project), Series 2005" in the initial aggregate principal amount of not exceeding \$2,965,000 for the principal purpose of providing moneys to refinance the Prior 1995 Bonds by the exchange of said Series 2005 Bonds for a like amount of Prior 1995 Bonds pursuant to the Offer to Exchange, the form of which is attached hereto as Appendix D. The Offer to Exchange is hereby authorized and approved. The Series 2005 Bonds shall be issued only in accordance with the provisions hereof and of the Offer to Exchange, the Bond Indenture, the Loan Agreement and the Private Placement Memorandum and all provisions hereof, the Offer to Exchange, the Bond Indenture, the Loan Agreement and the Private Placement Memorandum shall be applicable thereto. The Series 2005 Bonds shall be issued as set forth in the Bond Indenture and shall be dated, bear interest payable on the dates at the rate of interest and be subject to redemption, all as set forth in the Bond Indenture.

SECTION 5. AUTHORIZATION OF EXECUTION AND DELIVERY OF THE BOND INDENTURE AND THE LOAN AGREEMENT. The Bond Indenture and the Loan Agreement, substantially in the forms attached hereto as Appendices A and B, respectively, with

such corrections, insertions and deletions as may be approved by the Chairman of the Authority, such approval to be evidenced conclusively by his or her execution thereof, are hereby approved and authorized. The Authority hereby authorizes and directs the Chairman to date and execute and the Secretary to attest the Bond Indenture and the Loan Agreement, and to deliver the Bond Indenture and the Loan Agreement. All of the provisions of the Bond Indenture and the Loan Agreement, when executed and delivered by the Authority, as authorized herein, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein.

SECTION 6. AUTHORIZATION OF DELIVERY OF THE PRIVATE PLACEMENT MEMORANDUM. The Private Placement Memorandum, substantially in the form attached hereto as Appendix C is hereby approved and authorized. The Authority hereby authorizes the delivery of the Private Placement Memorandum. All of the provisions of the Private Placement Memorandum, when delivered as authorized herein and by the Company, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein.

SECTION 7. PAYMENT OF THE SERIES 2005 BONDS. The Series 2005 Bonds shall be payable as to principal and interest in lawful money of the United States of America at the designated office of the Bank in accordance with the Loan Agreement.

SECTION 8. AUTHORIZATION OF EXECUTION OF OTHER CERTIFICATES AND OTHER INSTRUMENTS. The Chairman and the Secretary are hereby authorized and directed, either alone or jointly, to execute and deliver certificates of the Authority certifying such facts as the County Attorney or Bond Counsel shall require in connection with the issuance and delivery of the Series 2005 Bonds, and to execute and deliver such other instruments, including but not limited to, deeds, assignments, bills of sale, tax agreements and financing statements, as shall be necessary or desirable to perform the Authority's obligations under the Bond Indenture, the Loan Agreement and the Private Placement Memorandum, and to consummate the transactions hereby authorized.

SECTION 9. REDEMPTION OF PRIOR 1995 BONDS NOT EXCHANGED FOR SERIES 2005 BONDS. Outstanding Prior 1995 Bonds not exchanged for Series 2005 Bonds are hereby called for redemption prior to the maturity thereof on the first business day in any month determined by the Company and the Bank in compliance with the terms of the indenture authorizing the issuance of the Prior 1995 Bonds. The Bank is authorized to mail the Notice of Redemption in substantially the form attached hereto as Appendix E to the holders of the Prior 1995 Bonds.

SECTION 10. NO PERSONAL LIABILITY. No representation, statement, covenant, warranty, stipulation, obligation or agreement herein contained, or contained in the Series 2005 Bonds, the Bond Indenture, the Loan Agreement, or the Private Placement Memorandum or any assignment thereof, or any certificate or other instrument to be executed on behalf of the Authority in connection with the issuance of the Series 2005 Bonds, shall be deemed to be a representation, statement, covenant, warranty, stipulation, obligation or agreement of any elected official, officer, employee or agent of the Authority in his or her individual capacity, and none of the foregoing persons nor any elected or appointed official of the Authority executing the Series 2005

Bonds, the Bond Indenture, the Loan Agreement or the Private Placement Memorandum or any certificate or other instrument to be executed in connection with the issuance of the Series 2005 Bonds shall be liable personally thereon or be subject to any personal liability of or accountability by reason of the execution or delivery thereof.

SECTION 11. NO THIRD PARTY BENEFICIARIES. Except as otherwise expressly provided herein or in the Series 2005 Bonds, the Bond Indenture, the Loan Agreement and the Private Placement Memorandum nothing in this Resolution, or in the Series 2005 Bonds, the Bond Indenture, the Loan Agreement and the Private Placement Memorandum, express or implied, is intended or shall be construed to confer upon any person, firm, corporation or other organization, other than the Authority, the Company and the Bank any right, remedy or claim, legal or equitable, under and by reason of this Resolution or any provision hereof, or of the Series 2005 Bonds, the Bond Indenture, the Loan Agreement and the Private Placement Memorandum, all provisions hereof and thereof being intended to be and being for the sole and exclusive benefit of the Authority, the Company and the Bank.

SECTION 12. PREREQUISITES PERFORMED. All acts, conditions and things relating to the passage of this Resolution, to the issuance of the Series 2005 Bonds and to the execution and delivery of the Bond Indenture, Loan Agreement and the Private Placement Memorandum, required by the Constitution or other laws of the State, to happen, exist and be performed precedent to the passage hereof, and precedent to the issuance of the Series 2005 Bonds, to the execution and delivery of the Bond Indenture, Loan Agreement and the Private Placement Memorandum, have either happened, exist and have been performed as so required or will have happened, will exist and will have been performed prior to such execution and delivery thereof.

SECTION 13. GENERAL AUTHORITY. The members of the Authority and its directors, officers, attorneys, engineers or other agents or employees are hereby authorized to do all acts and things required of them by this Resolution, the Series 2005 Bonds, the Bond Indenture, the Loan Agreement and the Private Placement Memorandum, and to do all acts and things which are desirable and consistent with the requirements hereof or of the Series 2005 Bonds, the Bond Indenture, the Loan Agreement and the Private Placement Memorandum, for the full, punctual and complete performance of all the terms, covenants and agreements contained herein and in the Series 2005 Bonds, the Bond Indenture, the Loan Agreement and the Private Placement Memorandum.

SECTION 14. LIMITED OBLIGATIONS. The Series 2005 Bonds and the interest thereon shall not constitute an indebtedness or pledge of the general credit or taxing power of the Authority, Monroe County, the state of Florida or any political subdivision or agency thereof but shall be payable solely from the revenues pledged therefore pursuant to the Loan Agreement or other financing agreement entered into by and between the Authority and the Company prior to or contemporaneously with the issuance of the Series 2005 Bonds. The Authority has no taxing power.

SECTION 15. LIMITED APPROVAL. The approval given herein shall not be construed as (i) an endorsement of the creditworthiness of the Company, (ii) a recommendation to any prospective purchaser of the Series 2005 Bonds, (iii) an evaluation of the likelihood of the

repayment of the debt service on the Series 2005 Bonds, or (iv) an approval of any necessary rezoning applications nor for any other regulatory permits relating to the System.

SECTION 16. THIS RESOLUTION CONSTITUTES A CONTRACT. The Authority covenants and agrees that this Resolution shall constitute a contract between the Authority and the Company and that all covenants and agreements set forth herein and in the Series 2005 Bonds, the Bond Indenture, the Loan Agreement and the Private Placement Memorandum, to be performed by the Authority shall be for the benefit and security of the Company.

SECTION 17. SEVERABILITY OF INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions, and shall in no way affect the validity of any of the other provisions hereof or of the Series 2005 Bonds.

SECTION 18. REPEALING CLAUSE. All resolutions or parts thereof in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

SECTION 19. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

Passed and adopted by the Monroe County Industrial Development Authority at a meeting of the Authority on this 21st day of April, 2005.

**MONROE COUNTY INDUSTRIAL
DEVELOPMENT AUTHORITY**

Chairman

ATTEST:

Secretary

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:
